(1) Supreme Court, U.S.
FILED

No. 00-235 JUL 24 2000

OFFICE OF THE CLERK

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

IN THE MATTER OF:

DOM GIORDANO, APPELLANT
v.
TOM RIDGE, GOVERNOR; COMMONWEALTH OF PENNSYLVANIA;
MIKE FISHER, ATTORNEY GENERAL;
CITY OF PHILADELPHIA; CITY OF PITTSBURGH

On Petition for Writ of Certiorari From the
Supreme Court of Pennsylvania,
No. 0225 M.D. Appeal Docket 1999

PETITION FOR A WRIT OF CERTIORARI

PHILIP J. BERG
Counsel of Record
Attorney for Petitioner
706 Ridge Pike
Lafayette Hill, PA 19444
(610) 825-3134

6299

QUESTIONS PRESENTED

Pursuant to the provisions of the Capital Facilities Debt Enabling Act P.L. 1, 72 P.S. Section 3919.101-3919.5102 (February 9, 1999) the Pennsylvania legislature authorized the incurring of debt on the part of the Commonwealth solely for the benefit of private, professional team owners and athletes by financing the construction of four new stadiums. This legislation was enacted without having fulfilled the fundamental precept of public purpose as required by Article VIII of the Pennsylvania Constitution. Resident-taxpayer Giordano sought to challenge the constitutionality of this Act via appropriate legal action against the Governor, the Attorney General, the Commonwealth, and the Cities of Philadelphia and Pittsburgh. Ultimately a hearing on the merits was precluded by the affirmance by the Supreme Court of Pennsylvania of the Commonwealth's Order sustaining the Respondents' Objection in the nature of a demurrer and dismissing with prejudice Giordano's Petition for Review. The two line Per Curiam Order cited only Martin v. Philadelphia as its rationale, a 1966 case that upheld a loan by the City with consent of electors via referendum to build a stadium. From this Order and upon the caselaw reliance, the question presented herein arises. Whether the Capital Facilities Debt Enabling Act is in violation of the Pennsylvania Constitution in light of its authorization of indebtedness of a loan to private, professional sports teams; and without the required public purpose mandated by Article 8 of the Pennsylvania Constitution; and in light of the absence of full judicial review, which is a violation of due process as required by the 14th Amendment of the U.S. Constitution, of the "stadium phenomenon legislation" erroneously precluded by the Courts' reliance upon limited, dated and inapplicable caselaw?

PARTIES TO THE PROCEEDING

Petitioner---Dom Giordano

Respondents---Tom Ridge, Governor, Commonwealth of Pennsylvania; the Commonwealth of Pennsylvania; Mike Fisher, Attorney General, Commonwealth of Pennsylvania; City of Philadelphia; and City of Pittsburgh

TABLE OF CONTENTS

Question Presented.....	i
Parties to the Proceeding.....	ii
Table of Contents.....	iii
Table of Citations.....	iv
Opinions Below.....	1
Statement Of Jurisdiction.....	2
Constitutional & Statutory Provisions.....	2-3
Petition for a Writ of Certiorari.....	4
Statement of the Case.....	5-9
a. Pennsylvania Supreme Court Proceeding.....	7
b. Pennsylvania Commonwealth Court Proceeding.....	8-9
Reasons for Granting the Writ.....	10-13
Conclusion.....	14

Appendix A:
Per Curiam Order of the Supreme Court of Pennsylvania Middle District

Decided June 20, 2000..... 1a

Appendix B:

Opinion of the Commonwealth Court of Pennsylvania, Middle District, dated August 31, 1999..... 2a-11a

Appendix C:

Dissenting Opinion of the Honorable Judge Smith of the Commonwealth Court of Pennsylvania, Middle District, dated and filed August 31, 1999..... 12a-21a

Appendix D:

Order of the Commonwealth Court of Pennsylvania dated February 25, 1999 denying Preliminary Injunction.....22a-23a

Appendix E:

Unreported Memorandum Opinion of the Honorable Judge Colins of the Commonwealth Court of Pennsylvania, dated February 25, 1999.....24a-34a

Appendix F:

Pertinent Portions of The Capital Facilities Debt Enabling Act, P.L. 1, 72 P.S. Section 3919.101 et seq. relating to Sports Stadium Financing at Sections 501 - 510.....35a-42a

TABLE OF CITATIONS

CASES CITED:

Basehore vs. Hampden Industrial Development Authority 433 Pa. 440, 248 A.2d 212 (1968).....8,11

Brandes vs. Deerfield Beach (1986 Fla.) 186 So 2d 6.....11

In Re Opinion of the Justices, 356 Mass. 775, 250 NE2d 5547 (1969).....11

Martin vs. Philadelphia, 420 Pa. 14, 215 A.2d 894 (1966).....i, 7, 12

STATUTES CITED:

Fourteenth Amendment of the United States Constitution.....i, 2, 6, 7

28 U.S.C. 1257 (a) 2

Capital Facilities Debt Enabling Act P.L. 1, 72 P.S. Section 3919.101-3919.5102 (February 9, 1999) Sections 501-510.....i, 2, 5, 8, 9, 12

Pennsylvania Constitution, Article 8, Section 7.....i, 3

Pennsylvania Constitution, Article 8, Section 8.....i, 2, 3, 5, 8, 10

OPINIONS AND ORDERS BELOW

The Per Curiam Order of the Supreme Court of Pennsylvania Middle District decided June 20, 2000 is produced in Appendix A, page 1a.

The Reported Opinion of the Commonwealth Court of Pennsylvania, Middle District, dated August 31, 1999 is produced in Appendix B, pages 2a-11a.

The Dissenting Opinion of the Honorable Justice Smith of the Commonwealth Court of Pennsylvania, Middle District, dated and filed August 31, 1999 is produced in Appendix C, pages 12a-21a.

Order of the Commonwealth Court of Pennsylvania dated February 25, 1999 denying Preliminary Injunction is produced in Appendix D, pages 22a-23a.

The Unreported Opinion of the Honorable Judge Colins of the Commonwealth Court of Pennsylvania, dated February 25, 1999 is produced in Appendix E, pages 24a-34a

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Pennsylvania sought to be reviewed was entered on June 20, 2000. The jurisdiction of the Court is invoked under 28 U.S.C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment of the United States Constitution provides, in pertinent part:

> ...[N]or shall any State deprive any person of life liberty, or property, without due process of law; or deny any person within its jurisdiction the equal protection of the laws.

Capital Facilities Debt Enabling Act P. L. 1, 72 P.S. Section 3919, et seq., (February 9, 1999) pertinent portions relevant to Stadium financing. (Sections 501-510 are set forth in Appendix F)

Pennsylvania Constitution Article 8, Section 8:

> The credit of the Commonwealth shall not be pledged or loaned to any

> individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association.

Pennsylvania Constitution Article 8, Section 7:

> No debt shall be incurred by or on behalf of State except by law and in accordance with the provisions of this statute...

PETITION FOR A WRIT OF CERTIORARI

To the Honorable Chief Justice and

the Associate Justices of the Supreme Court:

Dom Giordano Petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Pennsylvania in this case.

STATEMENT OF THE CASE

The Petitioner Dom Giordano, a resident and taxpayer of the Commonwealth of Pennsylvania exercised his right to challenge the constitutionality of the Capital Facilities Debt Enabling Act, alleging that the Act violates the law and spirit of the Pennsylvania Constitution in its authorization of the issuance of loans on the part of the Commonwealth that do not comply with or fulfill the public purpose requirement of Article 8. Petitioner alleged that Sections 501-510 of the Act signed into law by the Governor on February 9, 1999 is, in actuality, a loan funded by taxpayers without consent or referendum to the private sector of professional athletes and team owners masked within the language of a grant. Petitioner, accordingly, filed a Petition for Review, seeking declaratory and injunctive relief with the Commonwealth Court on February 11, 1999. In addition, Petitioner filed a motion for a preliminary injunction and a motion for ex parte preliminary injunctive relief,

the latter of which was denied by the Commonwealth Court.

On February 22, 1999, the Commonwealth, the Governor, the Attorney-General and the Cities of Philadelphia and Pittsburgh filed preliminary objections in the nature of a demurrer to the petition for review. By order of the Commonwealth Court on February 25, 1999, Petitioner's motion for preliminary injunction was denied. By order of the Commonwealth Court, the preliminary objections in the nature of a demurrer and the dismissal of the petition for review with prejudice was sustained. Petitioner thereafter filed a timely appeal to the Supreme Court of Pennsylvania which affirmed the decision of the Commonwealth Court. Neither of these proceedings afforded Petitioner a hearing on the merits in violation of the 14th Amendment of the U.S. Constitution.

PA SUPREME COURT PROCEEDING

Timely notice of appeal to the Supreme Court of Pennsylvania was filed by Petitioner Giordano and resulted in the issuance of a Per Curiam Order dated June 20, 2000, consisting of a two line affirmance of the decision of the Commonwealth Court and the reference to a 1966 case of Martin vs. Philadelphia, 420 Pa. 14, 215 A.2d 894 (1966) as the basis for sustaining Respondents' Preliminary Objections in the nature of a demurrer and dismissing with prejudice Petitioner's Petition for Review. By so finding, the Court has precluded a full and fair hearing and as such is in violation of due process afforded by the 14th Amendment of the U.S. Constitution.

PA COMMONWEALTH COURT PROCEEDING

Before the Commonwealth Court, Petitioner had filed a petition for review of Act 1, seeking declaratory and injunctive relief in challenge to the constitutionality of the provisions authorizing disbursement of taxpayer funds to the private entities in violation of the Constitutional prohibition within Article 8 of the Commonwealth incurring debt without the requisite public purpose. The Respondents filed preliminary objections in the nature of a demurrer to the petition for review. The Commonwealth Court ultimately entered an order sustaining the Respondents' objections and dismissing with prejudice the Petitioner's petition for review in the nature of a complaint for declaratory judgement and injunctive relief. A memorandum opinion was issued by President Judge James Colins in which a three justice plurality case of Basehore vs. Hampden Industrial Development Authority 433 Pa. 440, 248 A.2d 212 (1968) was deemed as dispositive. A dissenting opinion was also issued by Judge Doris Smith in which she opined that the

Petitioner had indeed stated a clear cause of action. As noted by Judge Smith: "Nowhere in the majority opinion nor in the Respondents' brief is there any persuasive argument or case authority for the presumption or proposition that the planned public funding for the construction or renovation of sports stadium for professional sports organizations serves a public purpose and is otherwise lawful." (See opinion at Appendix C) With the issuance of the Order, the Commonwealth Court precluded the full and fair hearing of Petitioner's challenge to the constitutionality of Act 1 which violated Petitioner's right to due process.

REASONS FOR GRANTING THE WRIT

The issue in this matter addressed the upholding of legislation in violation of the mandates of the Pennsylvania Constitution. Although there is a strong presumption of the constitutionality of legislation, it is incumbent upon the Court to invalidate any statute in violation. To do otherwise is to abdicate judicial duty and to diminish judicial integrity. In the instant matter, the Pennsylvania Courts refusal to grant a full and fair hearing of the merits constitutes a violation of due process afforded by the U.S. Constitution.

The current matter illustrates in its most favorable light a misapplication of caselaw, in its harshest, a sacrifice of the terms of the Constitution to validate creative legislation of the "stadium phenomenon". Clearly, Article 8 of the Pennsylvania Constitution states that the Commonwealth shall not incur debt on behalf of the state and/or pledge the credit to an individual, company, corporation or association or any other entity unless it is for a public purpose.

Public purpose within legislation is only fulfilled if the priorities of use are specifically set forth to permit, to insure and to promote philanthropic, civic and educational activities at the facility. In Re Opinion of the Justices, 356 Mass. 775, 250 NE2d 5547 (1969). The existence of incidental advantage to the public does not constitute public purpose. Brandes vs. Deerfield Beach 186 So 2d 6 (1986 Fla.). Yet the clarity of the Constitutional mandate has been blurred by the imagery and fascination with stadium funding issues arising within innovative and creative legislation in which the concept of public purpose has been invalidated.

The case upon which the Commonwealth Court had relied is clearly distinguishable from the facts at hand. The essence of Basehore vs. Hampden Industrial Development 433 Pa. 440, 248 A.2d 212 (1968) is the judicial deference to the legislature in its attempt to combat an unemployment crisis via the financing of industrial development. The Court acknowledged the legislative finding as to the serious nature of the problem and then determined that the stipulation of

employment of five hundred and a guarantee not to replace any existent industry were sufficient indices to ensure the public purpose of the project. The concurring opinion offered a cautionary warning to abandon the notion that "a worthy objective legalizes and Constitutionalizes anything and everything." The case upon which the Pa. Supreme Court relied in its order - Martin vs. City of Philadelphia 420 Pa. 14, 215 A.2d 894 (1966) is similarly limited for it upheld a city ordinance of a loan to build a sports stadium noting that the decision belonged to the city administrators and to the voters (who had approved the same via referendum). Neither case is applicable to the facts herein.

The Capital Facilities Debt Enabling Act, 73 P.S. Section 3919.101 et seq., stands in violation to the Pennsylvania Constitution. It is lacking in public purpose and is misleading in its deceptive use of the term "grant" when it is authorizing a loan, a subsidy of public funds to private enterprise. It creates a concept of credits and forgiveness of taxes, thereby committing the Commonwealth's

funding to private sports organizations. This legislation is beyond the scope of legitimate government.

The proliferation of stadium building is not limited to Pennsylvania as evidenced by the prompting of Federal legislation by Senator Moynihan in his "Stop Tax Exempt Arena Debt Issuance Act". There is a paradox that private sports owners are able to exert more influence over the legislature than the taxpaying citizenry. Only the integrity of the judiciary can reassert constitutional compliance.

We pray that such relief is granted.

CONCLUSION

The Petition for a Writ Certiorari should be granted.

Appendix A

APPENDIX A: PER CURIAM ORDER OF THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT DECIDED JUNE 20, 2000

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

DOM GIORDANO, Appellant	:	
	:	0225 M.D. APPEAL
v.	:	DOCKET 1999
TOM RIDGE, GOVERNOR, COMMONWEALTH OF PENNSYLVANIA: and COMMONWEALTH OF PENNSYLVANIA: and MIKE FISHER, ATTORNEY GENERAL, COMMONWEALTH OF PENNSYLVANIA : and CITY OF PHILADELPHIA and CITY OF PITTSBURGH Appellees	:	

ORDER

PER CURIAM:
DECIDED: June 20, 2000

AND NOW, this 20th day of June, 2000, the Order of the Commonwealth Court is hereby affirmed. See Martin v. Philadelphia, 420 Pa. 14, 215 A.2d 894 (1966).

Appendix B

APPENDIX B: OPINION OF THE COMMONWEALTH COURT OF PENNSYLVANIA, MIDDLE DISTRICT, DATED AUGUST 31, 1999

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DOM GIORDANO, Petitioner	:	
	:	No. 103 M.D.
v.	:	1999
TOM RIDGE, GOVERNOR, COMMONWEALTH OF PENNSYLVANIA: and COMMONWEALTH OF PENNSYLVANIA: and MIKE FISHER, ATTORNEY GENERAL, COMMONWEALTH OF PENNSYLVANIA and CITY OF PHILADELPHIA and CITY OF PITTSBURGH Respondents	:	Argued May 19, 1999

BEFORE:

HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE JOSEPH T. DOYLE, Judge
HONORABLE DORIS A. SMITH, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge

HONORABLE JIM FLAHERTY, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge

OPINION BY
PRESIDENT JUDGE COLINS FILED: August 31, 1999

On February 12, 1999, Dom Giordano (Taxpayer) filed a petition for review in the nature of an action seeking declaratory and injunctive relief invoking this court's original jurisdiction. Presently before this court for disposition are the preliminary objections of Tom Ridge, Governor of the Commonwealth of Pennsylvania, Mike Fisher, Attorney General of the Commonwealth of Pennsylvania, the Commonwealth of Pennsylvania, and the Cities of Philadelphia and Pittsburgh (collectively, Respondents).

The pertinent facts of this case, as pleaded in Taxpayer's petition, are as follows. On February 9, 1999, the Governor signed into law The Capital Facilities Debt Enabling Act, Act of February 9. 1999, P.L. _____, 72 P.S. subsection 3919.101-3919.5102 (Act 1 or Act). Act 1 authorizes, and provides procedures for, application to the Commonwealth by municipalities and municipal authorities for state funding of certain capital projects. The Act

authorizes the undertaking of debt by the Commonwealth's issuance of general obligation bonds for the purpose of making grants to local authorities for the construction, repair, renovation, improvement, or equipment of qualifying capital projects.

Chapter 5 of the Act, which addresses sports facilities financing, provides for grants of commonwealth funds to a municipality or authority for the purpose of constructing or renovating a qualifying sports facility upon application by the municipality or authority and approval by the Office of the Budget of the Commonwealth. The grants contemplated under Act 1 are made to the contracting municipality or authority under Section 502 of the Act, and not directly to the tenant/professional sports organization. Furthermore, tenants are required to comply with certain certifications and conditions under Section 504 of Act. These include such conditions as an agreement by the tenant leasing the facility to remain in the facility for a specified period of time; an agreement that, if the tenant sells or transfers its sports franchise,

the transferee is to be bound by the same[1] conditions as the transferor; an agreement that any costs of design and construction that are due to delays or overruns are the responsibility of the municipality, authority or tenant; an agreement that either the municipality or tenant is responsible for capital improvements, security, maintenance, and utilities at the facility; an agreement to set aside a certain number of days for the use of the facility by the municipality and the Commonwealth; and an agreement that the tenant is to make an additional rental payment of $25 million after the first ten-year period of occupancy, which payment may be reduced by certain tax credits.[2]

---

[1]Act 1 is a reenactment and continuation of Article XVI-B of the law known as the Fiscal Code, Act of April 9, 1929, P.L. 343, as amended, formerly found at 72 P.S. subsection 1601-B-1616.2

[2]Tax credits would be calculated by a mathematical formula that, simply stated, is based on the increased tax revenue generated by the facility. Should the facility produce sufficient tax revenue, as calculated by the formula, this revenue would operate as a credit against the additional rental payment with the strong potential to reduce it to zero. Therefore, the additional payment would be

Taxpayer filed a petition for review claiming that Act 1 violates Article VIII of the Constitution of Pennsylvania by unconstitutionally incurring debt on behalf of the state and/or by pledging the credit of the Commonwealth to an individual, company, corporation, or association.[3] The petition for review requests that this Court issue a declaratory judgment finding Act 1 unconstitutional and permanently enjoin Respondents from disbursing any funds under Act 1. In response to Taxpayer's petition, Respondents filed preliminary objections in the nature of a demurrer

---

made only in the event that the facility fails to generate tax revenue sufficient to produce the credit.

[3]Along with the petition for review, Taxpayer filed a motion for preliminary injunction and a motion for *ex parte* preliminary injunction, which was treated by this court as a request for a special injunction without notice, and denied on February 12, 1999. Following a hearing on February 25, 1999, this Court also denied Taxpayer's motion for preliminary injunction. Taxpayer appealed the denial of the preliminary injunction to the Supreme Court and petitioned that Court for an injunction pending appeal. On March 26, 1999, the Supreme Court denied the request for an injunction pending appeal and directed that the appellate briefs be filed on April 9, 1999.

alleging that Taxpayer has failed to state a claim sufficient to permit an award of the relief requested.[4]

Initially, we note that in ruling on preliminary objections, in the nature of a demurrer, the Court accepts as true all well-pleaded material allegations in the petition for review, as well as all inferences reasonably deduced therefrom. *Envirotest Partners v. Department of Transportation,* 664 A.2d 208 (Pa. Cmwlth. 1995). The Court need not accept as true conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinion. *Id.* A demurrer will not be sustained unless the face of the pleadings shows that the law will not permit recovery, and any doubts should be resolved against sustaining the demurrer. *DeHart*

---

[4]The role of the trial court in ruling on preliminary objections in the nature of a demurrer is to determine whether or not the facts pleaded are legally sufficient to permit the action to continue. Where, as here, there is no factual dispute in the case, only a dispute over the interpretation of the Constitution, it is the appropriate juncture for the court to interpret the pertinent provisions of the Pennsylvania Constitution and determine the merits of the Taxpayer's claim. *Firing v. Kephart,* 466 Pa. 560, 353 A. 2d 833 (1976).

v. Horn, 694 A.2d 16 (Pa. Cmwlth. 1997). Additionally, an Act of the general assembly may be declared unconstitutional only where it clearly, palpably, and plainly violates the Constitution. *Consumer Party of Pennsylvania v. Commonwealth,* 510 Pa. 158, 507 A.2d 323 (1986). It is axiomatic that Acts of the General Assembly enjoy a strong presumption of constitutionality. *Id.* With these standards in mind, we consider Respondents' preliminary objections.

Article VIII, Section 8 of the Pennsylvania Constitution provides,

> The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association.

Our Supreme Court discussed the intent of Article VIII, Section 8 in *Tosto v. Pennsylvania Nursing Home Loan Agency,* 460 Pa. 1, 331 A.2d 198 (1975). The Court observed that Article VIII, Section 8 was adopted in 1857 in reaction to, and with the specific purpose of, eliminating the type of speculative financing by the

Commonwealth that had become prevalent in the mid-nineteenth century in an effort to aid the growth of the railroads. The Court stated, "{t}he term 'pledge or loan of credit' is a term of art referring to these financing devices and clearly not intended to prohibit other sorts of financial transactions between the Commonwealth and private citizens or corporations..." *Id.* at 15-16, 331 A.2d at 205. Additionally, our Supreme Court has held that this language does not prohibit loans from the Commonwealth to a municipal authority, even where the ultimate beneficiary of such loan may be a private entity. *Basehore v. Hampden Industrial Development Authority,* 433 Pa. 40, 248 A.2d 212 (1968). In *Basehore,* taxpayers challenged the Industrial Development Authority Law[5] on several grounds including an allegation that the law violated Article VIII, Section 8.[6] Justice Jones, writing for a three-justice

---

[5]Act of August 23, 1967, P.L. 251, *as amended,* 73 P.S. subsection 371-386. A 1971 amendment changed the title of the law to the "Industrial and Commercial Development Authority Law."

[6]Article VIII, Section 8 was renumbered in 1967 and 1968. Although the section had already been renumbered by the

plurality of the Supreme Court concluded,

> The money...will go to the Authorities and not to the industrial corporations; the Authorities will own the factories; the corporations will lease the plants from the Authorities. Therefore, if credit is being lent to anyone, it is being lent to the Authorities. On several occasions we have held that authorities similar to the Industrial Development Authorities involved in this case were not individuals, companies, corporations or associations with the meaning of {Article VIII, Section 8}. See: Bernstein v. City of Pittsburgh, 366 Pa. 200, 210, 77 A.2d 452 (1951); McSorley v. Fitzgerald, 359 Pa. 264, 271, 59 A.2d 142 (1948); Belovsky v. Redevelopment Authority of City of Philadelphia, 357 Pa. 329, 345, 43 A.2d 277, 172 A.L.R. 953 (1947); Williams v. Samuel, 332 Pa. 265, 275, 2 A.2d 834 (1938); Tranter v. Allegheny County Authority, 316 Pa. 65, 81, 183 A.289 (1934).

433 Pa. At. 59, 248 A.2d 222.

Under Act I, as in *Basehore*, the money flows from the

---

time the *Basehore* opinion was filed, the opinion refers to the section under its prior designation as Article IX, Section 6.

Commonwealth to a municipality or municipal authority and not directly to the private entity. Therefore, even assuming the credit of the Commonwealth were being pledged or loaned within the meaning of Article VIII, Section 8, it is to a municipality or authority and not to any "individual, company, corporation or association."

Given our Supreme Court's pronouncements interpreting Article VIII and the type of financing proscribed by Act 1, we agree that Taxpayer has failed to state a claim of unconstitutional incursion or debt or pledging of the credit of the Commonwealth. Accordingly, Respondents' preliminary objections in the nature of a demurrer are sustained. Taxpayer's petition for review fails to state claim of action upon which the requested relief may be granted. Taxpayer's petition for review in the nature of a complaint for declaratory judgment and injunctive relief is dismissed with prejudice.

JAMES GARDNER COLINS, President Judge

Judge McGinley did not participate in the decision in this case.

Appendix C

APPENDIX C: DISSENTING OPINION OF THE HONORABLE JUDGE SMITH OF THE COMMONWEALTH COURT OF PENNSYLVANIA, MIDDLE DISTRICT, DATED AND FILED AUGUST 31, 1999

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DOM GIORDANO, Petitioner	:	
v.	:	No. 103 M.D. 1999
TOM RIDGE, GOVERNOR, COMMONWEALTH OF PENNSYLVANIA: and COMMONWEALTH OF PENNSYLVANIA: and MIKE FISHER, ATTORNEY GENERAL, COMMONWEALTH OF PENNSYLVANIA and CITY OF PHILADELPHIA and CITY OF PITTSBURGH Respondents	:	Argued: May 19, 1999

BEFORE:

HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE JOSEPH T. DOYLE, Judge
HONORABLE DORIS A. SMITH, Judge

HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge

DISSENTING OPINION
BY JUDGE SMITH FILED: August 31, 1999

I dissent from the majority decision to grant Respondents' preliminary objections to Petitioner's petition for review in the nature of a complaint for declaratory judgment. Petitioner has stated a clear cause of action in his case which challenges the constitutionality of the Capital Facilities Debt Enabling Act (Act 1).[1] The majority correctly notes the case law of this Commonwealth that an act of the general assembly may be declared unconstitutional only where it clearly, plainly and palpably violates the Constitution, citing *Consumer Party of Pennsylvania v. Commonwealth,* 510 Pa. 158, 507 A.2d 323 (1986), but it fails to thoroughly examine one of the most fundamental of precepts, *viz.*, that the Commonwealth shall not incur debt on behalf of the state and/or pledge the credit of the

---

[1]Act of February 9, 1999, P.L. 1, 72 P.S. Subsections 3919.101-3919.5012.

Commonwealth to an individual, corporation or association or any other entity unless it is for a *public purpose*. Article VIII, Section 8, Pa. Constitution.

The majority and Respondents emphasize that the funds generated from the Commonwealth's incurring debt to fund new sports stadiums are to be made available to a contracting municipality or authority rather than to an individual, company, corporation or association, but they ignore the undisputed fact that the pass-through is for the sole benefit of private sports organizations which operate for private, profit-making purposes. These organizations do not perform a public or governmental function; rather they operate to attract a targeted group of people - sports patrons and enthusiasts - to attend paid football, baseball or other sporting events for the personal and private social enjoyment of the patrons.

In *Tosto v. Pennsylvania Nursing Home Loan Agency*, 460 Pa. 1, 331 A.2d 198 (1975), a case of first impression involving the application of Article VIII, Section 8 to the sale of general obligation

bonds backed by the credit of the Commonwealth as here, the Supreme Court stated that "pledge or loan of credit" is a term of art that did not prohibit various sorts of financial transactions between the Commonwealth and private citizens or corporations that serve a *public purpose are and otherwise lawful.* In *Tosto* the Legislature submitted to the voters the question of whether the Commonwealth should incur debt to make loans available for the repair, reconstruction and rehabilitation of nursing homes in the Commonwealth to meet health and safety standards. The voters approved the plan in 1974, and the Supreme Court rejected all challenges to the constitutionality of the former Nursing Home Loan Agency Law[2] as it was enacted for a proper public purpose. The court held that the presumption of constitutionality of the challenged legislation was strengthened by the fact that the voters had approved the loan program by referendum in 1974. In the present case, the

---

[2]Act of July 22, 1974, P.L. 610, *as amended, formerly* 62 P.S. subsection 1521.101 - 1521.305, repealed by Section 9(a) of the Act of February 23, 1996, P.L. 27.

stadium funding was never submitted to the voters for their approval.

Black's Law Dictionary 1231 (6th ed. 1990) defines *public purpose* in relevant part as follows:

> The term is synonymous with governmental purpose. {T}he essential requisite {is} that a public service or use shall effect the inhabitants as a community and not merely as individuals. A public purpose or public business has for its objective the promotion of public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business.

Thus the threshold question to be resolved in determining whether Petitioner has stated a cause of action is whether the contemplated sports stadium funding promotes the health, safety, morals, general welfare, security, prosperity and contentment of all the citizens and residents of the Commonwealth or of the municipalities in which

new stadiums are to be constructed.

Relying on President Judge Colins' memorandum opinion denying Petitioner's motion for preliminary injunction and the Supreme Court's decision in *Basehore v. Hampden Industrial Development Authority,* 433 Pa. 40, 248 A.2d 212 (1968), Respondents argue that even though the professional sports organizations for whom the legislation was enacted will be the primary beneficiaries, that fact does not render it unconstitutional. They correctly maintain that the Legislature may address an economic problem to benefit the public, but it may do so, however, only where the challenged legislation confers a public benefit and promotes a *public purpose.* Respondents further assert that because Act 1 authorizes grants with conditions to municipalities and authorities as opposed to grants to an individual, company, corporation or association and addresses "construction and renovation of certain public facilities," its constitutionality is presumed. Moreover, the majority evidently relies in part upon certain specified conditions attached to the funding to conclude that

Act 1 is constitutional. [3]

Nowhere in the majority opinion nor in Respondents' brief is there any persuasive argument or case authority for the presumption or proposition that the planned public funding for the construction or renovation of sports stadiums for professional sports organizations serves a *public purpose* and is otherwise lawful. The sports organizations benefited by Act 1 are solely owned by private interests, although that fact alone is not dispositive; the alleged economic development to flow from the new construction is speculative; the alleged impact on unemployment is speculative as opposed to the clearly stated employment projections in *Basehore;*

---

[3]The conditions include, among other things, setting aside an unspecified number of days for the municipality or the Commonwealth to use the new or renovated facilities contemplated by Act 1 and requiring the private sports organizations to make rental payments of $25 million after the first ten-year period of occupancy (possibly reduced to zero by available credits). These conditions do not elevate this venture to one of governmental proportions for the benefit of the general public.

the long-term jobs, if any, which may be created for the communities at large surrounding the new stadiums would be seasonal and in all probability low-level; and the Court may take judicial notice of the fact that many of the sports players who contract with the professional sports organizations earn multi-millions in annual salary. (The dissent notes the 1999 Philadelphia Eagles $55 million 7-year contract with recent first-round draft pick.) These factors raise genuine and fundamental questions as to the public benefit and *public purpose* behind the enactment of Act I.

The legislation at issue in *Basehore,* originally titled the Industrial Development Authority Law,[4] represented a legislative effort to resolve serious unemployment problems in parts of the Commonwealth. The Supreme Court noted the express principle behind creation of the industrial development projects: to encourage private manufacturing in the state with the resulting increase in

---

[4]Act of August 23, 1967, P.L. 1609, *as amended,* 73 P.S. subsection 371 - 386, retitled the Economic Development Financing Law by Section 1 of the Act of December 17, 1993, P.L. 490.

employment and the development of new jobs, a public purpose enforces within the police powers of the Commonwealth. The legislative findings were that unemployment was a serious problem and that industrial development projects represented an effective tool to combat that problem. Notably, Justice Roberts emphasized in his concurring opinion in *Basehore* that "although the immediate beneficiary is intended to be the industrial lessee, it acts solely as a conduit by which the public may realize the ultimate benefit of local economic growth. Here,...the totality of the projects will be devoted to their stated purpose - the reduction of unemployment through the creation of new plant development. While private interests are necessarily aided, the purpose of this aid is to foster a vital public interest" *Id.*, 433 Pa. at 66-67, 248 A.2d at 225.

The legislative intent behind Act I does not represent the type of public benefit or *public purpose* contemplated by Article VIII. Respondents' analogy to the state's raising nursing home health and safety standards to protect nursing home residents or acting within its police powers to develop jobs to address serious unemployment

problems may not, without more, transform funding for private sports stadiums to the level of governmental or *public purpose* necessary to confer constitutionality upon the challenged legislation. The Court therefore should not sustain Respondents' demurrer in the face of this record, and any doubts about the merits should be resolved in Petitioner's favor. *DeHart v. Horn*, 694 A.2d 16 (Pa. Cmwlth. 2997). Hence, Respondents' preliminary objections should be denied, and Petitioner should be permitted to proceed with his declaratory judgment action.

DORIS A. SMITH, Judge

Judge Doyle joins in this dissenting opinion.

Appendix D

APPENDIX D: ORDER OF THE COMMONWEALTH COURT OF PENNSYLVANIA DATED FEBRUARY 25, 1999 DENYING PRELIMINARY INJUNCTION

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DOM GIORDANO, Petitioner	
	: NO. 103 M.D. 1999
v.	
TOM RIDGE, GOVERNOR, COMMONWEALTH OF PENNSYLVANIA	
and	
COMMONWEALTH OF PENNSYLVANIA	
and	
MIKE FISHER, ATTORNEY GENERAL, COMMONWEALTH OF PENNSYLVANIA	
and	
CITY OF PHILADELPHIA	
and	
CITY OF PITTSBURGH	

ORDER

AND NOW, this 25th day of February, 1999, following argument on petitioner's request for preliminary injunction in the above-captioned matter, said request is **DENIED.** The Chief Clerk

is directed to schedule an argument on respondents' preliminary objections before the Court sitting en banc in Philadelphia during the week of May 17, 1999 and to set a briefing schedule accordingly. The costs of the Court's transcription fees shall be assessed against Petitioner.

JAMES GARDNER COLINS,
President Judge

CERTIFIED FROM THE RECORD
AND COURT EXIT
February 25, 1999

Appendix E

APPENDIX E: UNREPORTED MEMORANDUM OPINION OF THE HONORABLE JUDGE COLINS OF THE COMMONWEALTH COURT OF PENNSYLVANIA, DATED FEBRUARY 25, 1999

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DOM GIORDANO, Petitioner	:	
	:	NO. 103 M.D. 1999
v.	:	
TOM RIDGE, GOVERNOR, COMMONWEALTH OF PENNSYLVANIA	:	
and	:	
COMMONWEALTH OF PENNSYLVANIA	:	
and	:	
MIKE FISHER, ATTORNEY GENERAL, COMMONWEALTH OF PENNSYLVANIA	:	
and	:	
CITY OF PHILADELPHIA	:	
and	:	
CITY OF PITTSBURGH Respondents	:	Heard: February 25, 1999

BEFORE: HONORABLE JAMES GARDNER COLINS,
President Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY PRESIDENT JUDGE COLINS — FILED: February 25, 1999

Before the Court is petitioner's request for preliminary injunctive relief in our original jurisdiction.[1] At issue is the constitutionality of The Capital Facilities Debt Enabling Act, Act of February 9, 1999, P.L. ____(Act 1). Petitioner alleges that Act 1 violates Article VIII, Sections 7 and 8 of the Pennsylvania Constitution by unconstitutionally incurring debt on behalf of the state and/or by pledging the credit of the Commonwealth to an individual, company, corporation or association. The petition for review requests that this court issue a declaratory judgment finding Act 1 to be unconstitutional and permanently enjoin respondents from disbursing any funds under Act 1. In his request for preliminary injunctive relief, petitioner requests this Court to preliminarily enjoin respondents from disbursing any funds under the Act pending final resolution of the Declaratory judgment action.

In considering whether to grant a preliminary injunction, we

---

[1]By order dated February 12, 1999, we denied petitioner's request for *ex parte* injunctive relief and scheduled a hearing on petitioner's request for preliminary injunction.

are required to consider:

> 1) whether the injunction is necessary to prevent immediate and irreparable harm not compensable by damages;
> 2) whether greater injury will result by refusing such relief;
> 3) whether the injunction will restore the parties to the status quo; and
> 4) whether the plaintiff has a clear right to relief.

Norwood A. McDaniel Agency v. Foster, 543 A.2d 155 (Pa. Cmwlth. 1988).

Because the grant of a preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if each criterion has been fully and completely established. *Committee of Seventy v. Albert*, 381 A.2d 188 (Pa. Cmwlth. 1977). See also *Weiner v. Secretary of the Commonwealth*, 558 A.2d 185 (Pa. Cmwlth. 1989).

Petitioner's chief complaint with Act 1 appears to be Chapter 5 of the Act relating to Sports Facilities Financing. Chapter 5, in brief, authorizes "grants" of Commonwealth Funds to construct or renovate "facilities" in which certain professional athletic events are

conducted.[2] The "grants" contemplated under Act 1 are not made

---

[2]Section 501 of Act 1 defines "Facility" as

> a stadium, arena or other place owned or leased by a professional sports organization at which a professional athletic event is conducted in the presence of individuals who pay admission to view the event. The term includes a facility to be constructed as well as an existing facility.

"Professional Sports Organization" is defined by Section 501 as

> a sole proprietorship, corporation, limited liability company, partnership or association that:
>
> > (1) owns a professional major league baseball or national football franchise; and
> > (2) conducts professional athletic events of the franchise at a facility.

Petitioner asserts that Act 1 will be used to finance four professional sports stadia, two each in Philadelphia and Pittsburgh. While the Act makes no specific reference to stadia in these cities, we can take judicial notice of the

directly to the professional sports organization, but rather are made to a contracting municipality or authority under Section 502 of Act 1.[3] The professional sports organizations, however, are required to

---

fact that at the present time, there exist in Pennsylvania only four entitles that would meet the definition of "Professional Sports Organization," these being the Pittsburgh Pirates and Philadelphia Phillies major league baseball organizations and the Pittsburgh Steelers and Philadelphia Eagles National Football League franchises.

[3]Section 501 defines "Contracting Authority" as

> an authority created pursuant to the Act of May 2, 1945, (P.L. 385 No. 164), known as the Municipality Authorities Act of 1945, for the purpose of constructing or renovating a facility or other authority established under the laws of this Commonwealth which is eligible to apply for and receive redevelopment assistance capital grants under Chapter 3, under a contract with the office to received Commonwealth grants under this Chapter."

"Contracting Municipality" is defined by Section 501 as

> a city, county, township, town or borough which contracts with the office to receive

comply with certain certifications under Section 504 of the Act. Among those certifications is a requirement in Section 504(7) of Act 1 that the professional sports organization make an additional rental payment of $25,000,000 reduced by available credits after the initial ten-year period of occupancy and at the expiration of every ten-year period thereafter. Those credits would be calculated by a mathematical formula that, simply stated, is based on the increased tax revenue generated by the facility. Should the facility produce sufficient tax revenue, as calculated by the formula, this revenue would operate as a credit against the additional rental payment with the strong potential to reduce it to zero.[4] Therefore, the additional

---

Commonwealth funds to construct or renovate a facility.

[4]Buried at the end of the Act, in Section 504(7)(II)(A) and (B) is the proviso that additional rental payments due from the professional sports organization shall be further reduced by credits available for each ten-year period in an amount equal to *(inter alia)* all wage tax withheld from personnel by the professional sports organizations, contractors or other entity involved in the construction or renovation of the facility and the sales and use tax paid on materials and other construction costs

payment would only be made in the event that the facility fails to generate tax revenue sufficient to produce the credit.

Petitioner's theory seems to be that, because the Act might result in the professional sports organization "re-paying" portions of the "grants" to the Commonwealth through the additional rental payment, the language of the Act "masks" the actual nature of the transactions by characterizing them as "grants" when in fact they are actually loans to private organizations.

Article VIII, Section 8 of the Pennsylvania Constitution provides that

> The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association.

Our Supreme Court discussed the intent of Article VIII, Section 8 in *Tosto v. Pennsylvania Nursing Home Loan Agency*, 460

---

directly related to the construction or renovation of the facility.

Pa. 1, 331 A.2d 198 (1975). Justice Roberts, writing for a unanimous Supreme Court (Justices Eagen and Nix not participating), observed that

> In the mid-nineteenth century, industrial expansion, particularly the growth of railroads, created great demands for investment capital. When the private sector was unable to satisfy the demand, state and local governments stepped in the fill the need. One common method of assisting the railroads to raise capital was public guaranty of railroad obligations, frequently taking the form of an exchange of railroad bonds for state bonds, which the railroad then sold on the open market. In this way, railroads were able to attract investors who, without credit of the state on which to rely, would not have invested. Article VIII, Section 8 was adopted in 1957 in reaction to and with the specific purpose of eliminating these speculative forms of financing. The term "pledge or loan of credit" is a term of art referring to these financing devices and was clearly not intended to prohibit other sorts of financial transactions between the Commonwealth and private citizens or corporations that serve a public purpose and are otherwise lawful.

460 Pa. at 15-16, 331 A.2d at 205.

At the evidentiary hearing, petitioner presented expert testimony that these "grants" are, actually loans to private entities, i.e., professional sports teams, and are, therefore, proscribed by Sections 7 and 8 of Article VIII.

Assuming *arguendo*, that we were to accept the testimony of petitioner's economist/actuary that these grants are, in fact, loans, petitioner's request for a preliminary injunction must still fail. Article VIII, Section 8 proscribes the Commonwealth from pledging its credit to "any individual, company, corporation or association." Our Supreme Court has held that this language does not prohibit loans from the Commonwealth to a municipal authority, even where the ultimate beneficiary of such loan may be a private entity. In *Basehore v. Hampden Industrial Development Authority*, 433 Pa. 40, 248 A.2d 212 (1968). In Basehore, taxpayers challenged the Industrial Development Authority Law[5] on several grounds,

---

[5] Act of August 23, 1967, P.L. 251, as amended, 73 P.S. Section 371-386. A 1971 amendment changed the title of the law to the "Industrial and Commercial Development

including an allegation that the Law violated Article VIII, Section 8.[6] Justice Jones, writing for a 3-justice plurality of the Supreme Court, concluded that

> The money...will go to the Authorities and not to the industrial corporations; the Authorities will own the factories; the corporations will lease the plants from the Authorities. Therefore, if credit is being lent to anyone, it is being lent to the Authorities. On several occasions we have held that authorities similar to the Industrial Development Authorities involved in this case were not individuals, companies, corporations or associations within the meaning of [Article VIII, Section 8]. See: Bernstein v. City of Pittsburgh, 366 Pa. 200, 210, 77 A.2d 452 (1951); McSorley v. Fitzgerald, 359 Pa. 264, 271, 59 A.2d 142 (1948); Belovsky v. Redevelopment Authority City of Philadelphia, 357 Pa. 359, 345, 54 A.2d 277, 172 A.L.R. 953 (1947);

Authority Law."

[6]Article VIII, Section 8 was renumbered in 1967 and 1968. Although the section had already been renumbered by the time the Basehore opinion was filed, the opinion refers to the section under its prior designation as Article IX, Section 6.

Williams v. Samuel, 332 Pa. 265, 275, 2 A.2d 834 (1938); Tranter v. Allegheny County Authority, 316 Pa. 65, 81, 183 A. 289 (1934).

Here, as in *Basehore*, the money flows from the Commonwealth to a municipality or municipal authority and not directly to the private entity. Therefore, even assuming the credit of the Commonwealth were being pledged or loaned within the meaning of Article VIII, Section 8, it is to a municipality or authority and not to any "individual, company, corporation or association."

Given the history of Article VIII, Section 8 and our Supreme Court's pronouncements interpreting the section, we cannot conclude that petitioner has shown a clear right to the relief requested. Having so determined, we need not proceed to a consideration of the other elements necessary for the grant of a preliminary injunction, and shall enter an order accordingly.

James Gardner Colins, President Judge

APPENDIX F: PERTINENT PORTIONS OF THE CAPITAL FACILITIES DEBT ENABLING ACT, P.L. 1, 72 P.S. SECTION 3919.101 ET SEQ. RELATING TO SPORTS STADIUM FINANCING AT SECTIONS 501 - 510.

CHAPTER 5

SPORTS FACILITIES FINANCING

SECTION 501. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

...

"CONTRACTING AUTHORITY." AN AUTHORITY CREATED PURSUANT TO THE ACT OF MAY 2, 1945 (P.L. 382, No. 164), KNOWN AS THE MUNICIPALITY AUTHORITIES ACT OF 1945, FOR THE PURPOSE OF CONSTRUCTING OR RENOVATING A FACILITY OR OTHER AUTHORITY ESTABLISHED UNDER THE LAWS OF THIS COMMONWEALTH WHICH IS ELIGIBLE TO APPLY FOR AND RECEIVE REDEVELOPMENT ASSISTANCE GRANTS UNDER CHAPTER 3, UNDER A CONTRACT WITH THE OFFICE TO RECEIVE COMMONWEALTH GRANTS UNDER THIS CHAPTER.

"CONTRACTING MUNICIPALITY." A CITY, COUNTY, TOWNSHIP, TOWN OR BOROUGH WHICH CONTRACTS WITH THE OFFICE TO RECEIVE COMMONWEALTH FUNDS TO CONSTRUCT OR RENOVATE A FACILITY.

"FACILITY." A STADIUM, ARENA OR OTHER PLACE

OWNED OR LEASED BY A PROFESSIONAL SPORTS ORGANIZATION AT WHICH A PROFESSIONAL ATHLETIC EVENT IS CONDUCTED IN THE PRESENCE OF INDIVIDUALS WHO PAY ADMISSION TO VIEW THE EVENT. THE TERM INCLUDES A FACILITY TO BE CONSTRUCTED AS WELL AS AN EXISTING FACILITY.

"OFFICE." THE OFFICE OF THE BUDGET.

"PROFESSIONAL SPORTS ORGANIZATION" A SOLE PROPRIETORSHIP, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR ASSOCIATION THAT:

(1)OWNS A PROFESSIONAL MAJOR LEAGUE BASEBALL OR NATIONAL FOOTBALL FRANCHISE; AND

(2)CONDUCTS PROFESSIONAL ATHLETIC EVENTS OF THE FRANCHISE AT A FACILITY.

SECTION 504. REQUIREMENT.

IN ORDER FOR GRANTS OF COMMONWEALTH FUNDS TO BE USED TO CONSTRUCT OR RENOVATE A FACILITY, THE CONTRACTING MUNICIPALITY OR CONTRACTING AUTHORITY MUST CONTRACT WITH THE PROFESSIONAL SPORTS ORGANIZATION TO ENSURE COMPLIANCE BY THE PROFESSIONAL SPORTS ORGANIZATION WITH THE FOLLOWING TERMS AND CONDITIONS:

(1) AGREEMENT BY THE PROFESSIONAL SPORTS ORGANIZATION TO REMAIN AND CONDUCT PROFESSIONAL SPORTING EVENTS IN THE FACILITY FOR THE DURATION OF THE LEASE OR FOR THE TERM OF ANY DEBT OF THE COMMONWEALTH, WHICHEVER IS LONGER, BUT IN NO EVENT LONGER THAN 29.5 YEARS. THE

CONTRACT SHALL INCLUDE AGREEMENT BY THE PROFESSIONAL SPORTS ORGANIZATION THAT, IF THE AGREEMENT TO REMAIN AND CONDUCT PROFESSIONAL SPORTING EVENTS IS VIOLATED, THE CONTRACTING MUNICIPALITY OR CONTRACTING AUTHORITY SHALL SEEK SPECIFIC PERFORMANCE OF THE AGREEMENT TO REMAIN AND CONDUCT PROFESSIONAL SPORTING EVENTS OR RECEIVE A PAYMENT IN THE AMOUNT SET FORTH IN THE AGREEMENT BETWEEN THE CONTRACTING MUNICIPALITY OR CONTRACTING AUTHORITY AND THE PROFESSIONAL SPORTS ORGANIZATION AND THE AMOUNT EQUAL TO THE COMMONWEALTH'S PRINCIPAL CONTRIBUTION UNDER THIS ACT TO THE CONSTRUCTION OR RENOVATION OF THE FACILITY....

(6) AGREEMENT TO SET ASIDE A SPECIFIED MINIMUM NUMBER OF DAYS, AT REASONABLE TIMES THROUGHOUT THE YEAR, TO BE AVAILABLE FOR THE USE OF THE FACILITY BY THE CONTRACTING MUNICIPALITY OR CONTRACTING AUTHORITY OR BY THE COMMONWEALTH. UNDER THIS AGREEMENT, THE COMMONWEALTH SHALL RECEIVE THE SAME NUMBER OF DAYS AND BE ENTITLED TO THE SAME TERMS AS THE CONTRACTING MUNICIPALITY OR CONTRACTING AUTHORITY.

(7) AGREEMENT TO MAKE AN ADDITIONAL RENTAL PAYMENT OF $25,000,000 REDUCED BY AVAILABLE CREDITS UNDER SUBPARAGRAPHS (I) THROUGH (III) IN THE TAX YEAR IMMEDIATELY FOLLOWING THE EXPIRATION OF THE FIRST TEN-YEAR PERIOD OF OCCUPANCY OR LEASE OF THE FACILITY, AND AT THE EXPIRATION OF EVERY TEN-YEAR PERIOD THEREAFTER, THE PROFESSIONAL SPORTS ORGANIZATION SHALL PAY THE ADDITIONAL RENTAL PAYMENT TO THE CONTRACTING MUNICIPALITY OR CONTRACTING

AUTHORITY, WHICH SHALL REMIT THE ADDITIONAL RENTAL PAYMENT TO THE COMMONWEALTH. THE ADDITIONAL RENTAL PAYMENT MADE BY THE PROFESSIONAL SPORTS ORGANIZATION SHALL BE REDUCED BY THE FOLLOWING CREDITS:

(I) THE CREDITS AVAILABLE FOR THE FIRST TEN-YEAR PERIOD OF OCCUPANCY OR LEASE SHALL BE AMOUNTS PAID TO THE COMMONWEALTH WHICH EXCEED THE PRODUCT OF THE BASE LINE TAX AMOUNT MULTIPLIED BY 7.5. THE CREDITS AVAILABLE FOR EACH SUBSEQUENT TEN-YEAR PERIOD OF OCCUPANCY SHALL BE THE AMOUNTS PAID TO THE COMMONWEALTH WHICH EXCEED THE PRODUCT OF THE BASE LINE TAX AMOUNT MULTIPLIED BY 1. AVAILABLE CREDITS INCLUDE ALL OF THE FOLLOWING:

(A) AN AMOUNT EQUAL TO ALL CORPORATE NET INCOME TAX, CAPITAL STOCK AND FRANCHISE TAX AND PERSONAL INCOME TAX RELATED TO THE OWNERSHIP AND OPERATION OF THE PROFESSIONAL SPORTS ORGANIZATION.

(B) AN AMOUNT EQUAL TO:

(I) ALL PERSONAL INCOME TAX WITHHELD FROM ITS EMPLOYEES BY THE PROFESSIONAL SPORTS ORGANIZATION;

(II) ALL PERSONAL INCOME TAX TO WHICH

THE COMMONWEALTH FROM THE EMPLOYEES OF ANY PROVIDER OF EVENTS AT, OR SERVICE TO, OR ANY OPERATOR OF AN ENTERPRISE IN A FACILITY OR FACILITY COMPLEX; AND

(III) ALL PERSONAL INCOME TAX TO WHICH THE COMMONWEALTH WOULD BE ENTITLED FROM PERFORMERS OR OTHER PARTICIPANTS, INCLUDING VISITING TEAMS, AT AN EVENT OR ACTIVITY AT THE FACILITY.

(C) AN AMOUNT EQUAL TO ALL SALES AND USE TAX RELATED TO THE OPERATION OF THE PROFESSIONAL SPORTS ORGANIZATION AND THE FACILITY AND ENTERPRISES DEVELOPED AS PART TO THE FACILITY COMPLEX. THIS CLAUSE INCLUDES SALES AND USE TAX PAID BY ANY PROVIDER OF EVENTS OR ACTIVITIES AT, OR SERVICES TO, A FACILITY, INCLUDING SALES AND USE TAX PAID BY VENDORS AND CONCESSIONAIRES AND CONTRACTORS AT THE FACILITY.

(D) AN AMOUNT EQUAL TO ALL TAX PAID, BY THE PROFESSIONAL SPORTS ORGANIZATION OR BY ANY PROVIDER OF EVENTS OR

ACTIVITIES AT, OR SERVICES TO, A FACILITY, TO THE COMMONWEALTH RELATED TO THE SALE OF ANY LIQUOR, WINE OR MALT OR BREWED BEVERAGE IN THE FACILITY OR FACILITY COMPLEX OF ANY NEW TAX ENACTED BY THE COMMONWEALTH FOLLOWING THE EFFECTIVE DATE OF THIS CHAPTER.

(E) THE AMOUNT PAID BY THE PROFESSIONAL SPORTS ORGANIZATION OR BY ANY PROVIDER OF EVENTS OR ACTIVITIES AT, OR SERVICES TO, A FACILITY OR FACILITY COMPLEX OF ANY NEW TAX ENACTED BY THE COMMONWEALTH FOLLOWING THE EFFECTIVE DATE OF THIS CHAPTER.

(II) IN ADDITION TO THE CREDITS AVAILABLE UNDER SUBPARAGRAPH (I), THE PROFESSIONAL SPORTS ORGANIZATION MAY CREDIT AN AMOUNT EQUAL TO ONE-THIRD OF THE FOLLOWING, INCURRED PRIOR TO THE OCCUPANCY OR LEASE OF THE FACILITY:

(A) ALL PERSONAL INCOME TAX WITHHELD FROM PERSONNEL BY THE PROFESSIONAL SPORTS ORGANIZATION OR BY A CONTRACTOR OR OTHER ENTITY

INVOLVED IN THE CONSTRUCTION OR RENOVATION OF THE FACILITY; AND

(B) SALES AND USE TAX PAID ON MATERIALS AND OTHER CONSTRUCTION COSTS, WHETHER WITHHELD OR PAID BY THE PROFESSIONAL SPORTS ORGANIZATION OR OTHER ENTITY, DIRECTLY RELATED TO THE CONSTRUCTION OR RENOVATION OF THE FACILITY.

(III) TO THE EXTENT THE AMOUNT OF THE CREDITS AVAILABLE FOR A SPECIFIC TEN-YEAR PERIOD UNDER SUBPARAGRAPHS (I) AND (II) EXCEEDS $25,000,000, THE EXCESS MAY BE CARRIED OVER AND ADDED TO THE AMOUNT OF CREDITS CLAIMED UNDER SUBPARAGRAPHS (I) AND (II) FOR THE FOLLOWING TEN-YEAR PERIOD. ANY EXCESS CREDIT STILL REMAINING SHALL BE CARRIED OVER TO SUBSEQUENT TEN-YEAR PERIODS UNTIL IT IS EXHAUSTED OR UNTIL THE EXPIRATION OF THIS CHAPTER UNDER SECTION 509, WHICHEVER IS SOONER.

(IV) PAYMENTS SHALL BE MADE BY THE PROFESSIONAL SPORTS ORGANIZATION AND REMITTED BY THE CONTRACTING MUNICIPALITY OR CONTRACTING AUTHORITY AT A TIME AND IN A MANNER, INCLUDING REQUIRED DOCUMENTATION OF ALL CREDITS, AS THE OFFICE PRESCRIBES.

THIS SUBPARAGRAPH INCLUDES ANNUAL RECONCILIATION OF ALL CREDITS UNDER SUBPARAGRAPHS (I) AND (III). ALL TAX RECORDS AND INFORMATION SHALL BE SUBJECT TO ALL CONFIDENTIALITY PROTECTIONS PROVIDED BY THE ACT OF MARCH 4, 1971; HOWEVER, THE DEPARTMENT OF REVENUE SHALL PROVIDE RECORDS AND INFORMATION TO THE OFFICE AS NECESSARY FOR THE OFFICE TO ENFORCE THIS CHAPTER.

(8) AN AGREEMENT THAT, UPON SALE OF THE FACILITY OR THE EXPIRATION OF TERMINATION OF THE LEASE AT THE FACILITY, THE COMMONWEALTH SHALL HAVE AN OPTION TO PURCHASE FOR $1 A ONE-THIRD INTEREST IN THE FACILITY.

SECTION 505. OTHER AGREEMENTS

THE CONTRACTING MUNICIPALITY OR THE CONTRACTING AUTHORITY AND THE PROFESSIONAL SPORTS ORGANIZATION MAY ENTER INTO ALL OTHER AGREEMENTS NECESSARY AND APPROPRIATE FOR THE CONSTRUCTION, RENOVATION AND OPERATION OF THE FACILITY. THE CONTRACTING MUNICIPALITY OR THE CONTRACTING AUTHORITY SHALL ENTER INTO ALL CONTRACTS WITH THE OFFICE REQUIRED TO RECEIVE COMMONWEALTH FUNDS.

SECTION 506. REPORT

THE OFFICE SHALL FILE A REPORT EVERY TEN YEARS TO THE GENERAL ASSEMBLY REGARDING THE ADDITIONAL RENTAL PAYMENTS UNDER THIS CHAPTER...